

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

PENNSYLVANIA STATE TROOPERS ASSOCIATION :  
:  
v. : Case No. PF-C-06-102-E  
:  
COMMONWEALTH OF PENNSYLVANIA :  
PENNSYLVANIA STATE POLICE :

**FINAL ORDER**

The Commonwealth of Pennsylvania, Pennsylvania State Police (Commonwealth) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on July 3, 2007 challenging a Proposed Decision and Order (PDO) issued on June 14, 2007. In the PDO, the Board Hearing Examiner concluded that the Commonwealth violated Act 111 and Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) by unilaterally transferring bargaining unit work to non-bargaining unit civilian employes without prior negotiation with the Pennsylvania State Troopers Association (Association).<sup>1</sup> The Secretary of the Board granted the Commonwealth an extension of time to file a brief in support of the exceptions, which the Commonwealth timely filed on July 27, 2007. The Association filed a brief in response to the exceptions on August 17, 2007.

The Hearing Examiner's Findings of Fact (FF) are summarized as follows. During July and August of each year, in fifteen Troops of the Pennsylvania State Police, every school bus underwent a safety inspection as required by law. Since at least 1991, bargaining unit troopers exclusively performed those inspections without assistance from civilian employes. (FF 2). In 2005, the Commonwealth instituted a "pilot program" where civilian motor carrier enforcement officers and civilian motor carrier enforcement supervisors assisted the troopers with the school bus safety inspections in three of the fifteen Troops (Troops A, D and H). (FF 3). In June 2006, the Commonwealth assigned civilian motor carrier enforcement officers and civilian motor carrier enforcement supervisors to assist troopers with school bus safety inspections in the remaining twelve Troops. (FF 4 and 5). The Commonwealth did not bargain with the Association before civilian employes began assisting troopers with the school bus safety inspections in 2006. (FF 6). The Hearing Examiner found that the Commonwealth committed an unfair labor practice by unilaterally assigning school bus safety inspection work to non-bargaining unit employes in the twelve Troops where such work was exclusively performed by bargaining unit troopers since at least 1991.

The Commonwealth argues that the Hearing Examiner erred in failing to find that performing school bus safety inspections does not require law enforcement authority, and thus there was no transfer of bargaining unit work. However, such a finding is irrelevant to the determination in this case. The Commonwealth Court has expressly rejected the argument that bargaining unit work of police officers consists of only work that requires law enforcement authority. In City of Allentown v. PLRB, 851 A.2d 988 (Pa. Cmwlth. 2004), the Court stated:

The City argues that, because the work of the [Court Liason Officer] consisted solely of clerical duties not attendant to any law enforcement functions and required no specialized law enforcement training or certification, the union failed to prove that the City unilaterally removed "police work" from the bargaining unit. However, in making this argument, the City misconstrues the law.

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"[D]etermining whether job duties constitute bargaining unit work is mutually exclusive of whether those same job duties constitute police work" ... Here,

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<sup>1</sup> The Hearing Examiner dismissed an amendment to the Charge of Unfair Labor Practices alleging that the Commonwealth had unlawfully given bargaining unit supervisory duties to a civilian. The Hearing Examiner also dismissed a consolidated Charge, docketed at Case No. PF-C-07-15-E, alleging that a civilian employe unlawfully inspected a "superload" commercial vehicle without the assistance of a bargaining unit employe. The Association has not filed exceptions to the dismissal of these charges.

the work of the CLO became "bargaining unit work" in 1989 when the City assigned a member of the bargaining unit to the CLO position.

City of Allentown, 851 A.2d at 990 (citation omitted). Similarly here, even if performing safety inspections of school buses does not involve law enforcement functions, those inspections have been performed by bargaining unit troopers. Accordingly, the Hearing Examiner did not err in finding that safety inspection of school buses is bargaining unit work.

The Commonwealth next argues that the work of inspecting school buses and commercial vehicles is similar, and for decades civilians have been assisting troopers with the inspections of commercial vehicles. The Commonwealth thus contends that the Association failed to prove that the Commonwealth altered the extent to which civilians assist with commercial vehicle inspections. However, "a public employer commits an unfair labor practice if it unilaterally shifts any 'bargaining unit work' to non-[bargaining unit] members without first bargaining." City of Allentown, 851 A.2d at 990; see AFSCME Council 13 v. PLRB, 616 A.2d 135 (Pa. Cmwlth. 1992); City of Jeannette v. PLRB, 890 A.2d 1154 (Pa. Cmwlth. 2006).

The record evidence indicates that in twelve of the State Police Troops, inspection of school buses was a separate and distinct function performed exclusively by state troopers. Indeed, the non-unit employes who inspected commercial vehicles, and were unilaterally assigned to the school bus safety inspections in 2006, needed additional training to perform the school bus safety inspections. (N.T. 15). Moreover, before 2006, if a bargaining unit trooper needed assistance with inspecting a school bus, the trooper generally called another trooper for assistance, not a civilian. (N.T. 117).<sup>2</sup> Regardless of any similarity between performing inspections of school buses and inspecting commercial vehicles, in twelve Troops of the State Police since at least 1991, inspection of school buses was a distinct duty, and was separate work performed exclusively by bargaining unit employes.

As regards the three Troops where civilians had been assisting the troopers with the inspections since June 2005, under Section 9(e) of the PLRA, the Board is without jurisdiction to address that removal of bargaining unit work as it occurred more than six weeks prior to the filing of the Charge. However, the Hearing Examiner correctly found that by utilizing civilian employes in June 2006 to assist in the school bus safety inspections in the remaining twelve Troops, the Commonwealth substantially increased the extent to which civilians performed work that had previously been performed by the bargaining unit employes. AFSCME, Council 13, supra.

Since 1991, in twelve of the fifteen Troops, school bus safety inspections were performed exclusively by bargaining unit employes. In June 2006, the Commonwealth began assigning civilians to assist with school bus inspections in all fifteen Troops without first having bargained with the Association. In doing so, the Commonwealth unilaterally transferred bargaining unit work to non-bargaining unit employes in violation of Section 6(1)(a) and (e) of the PLRA and Act 111. Accordingly, after a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions and make the PDO final.

#### ORDER

In view of the foregoing and in order to effectuate the policies of Act 111 and the Pennsylvania Labor Relations Act, the Board

#### HEREBY ORDERS AND DIRECTS

that exceptions filed by the Commonwealth are hereby dismissed, and the June 14, 2007 Proposed Decision and Order, be and the same is hereby made absolute and final.

SEALED, DATED and MAILED pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Anne E. Covey, Member, and James M. Darby, Member, this eighteenth day of September, 2007. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within order.

<sup>2</sup> The fact that in the late 1980's, at the request of a trooper, a civilian employe assisted with an inspection of approximately sixty school buses at one of the Troops, (N.T. 85-88) is insubstantial in light of the twenty thousand or more buses inspected each year. (N.T. 116).

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**AFFIDAVIT OF COMPLIANCE**

The Commonwealth hereby certifies that it has ceased and desisted from its violations of Section 6(1)(a) and (e) of the PLRA, that it has rescinded the transfer from the bargaining unit of the work of conducting annual school bus safety inspections in the twelve Troops where members of the bargaining unit performed that work without the assistance of civilians prior to June 2006, that it has reinstated that work to the bargaining unit, that it has posted copies of the proposed decision and order and final order as directed, and that it has served an executed copy of this Affidavit on the Pennsylvania State Troopers Association.

\_\_\_\_\_  
Signature / Date

\_\_\_\_\_  
Title

SWORN AND SUBSCRIBED TO before me  
the day and year aforesaid.

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Signature of Notary Public